IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 919 OF 2007

IN

NOTICE OF MOTION NO. 3677 OF 2007

IN

L.C. SUIT NO. 4007 OF 2007

Madan Ramchandra Keni ... Appellant
(Org. Plaintiff)

Versus

The Municipal Corporation of
Greater Bombay. ... Respondent
(Org. Defendants)

Mr. S.K.Chaurasia, Advocate, for the appellant.

Mr. Ms. Geeta Joglekar, Advocate for BMC.

CORAM: J.H.BHATIA,J.

DATE: 12th December,2007.

P.C.

1. Heard learned Counsel for the parties.

2. The appellant is the original plaintiff. On 21.8.2007, a notice came to be issued to the plaintiff-appellant to the effect that there was a complaint that some people had raised unauthorised structures in the land given to Sion Kamgar Sahakari Co-operative Society by the Municipal Corporation and one such hut was in occupation of the present appellant. That hut is on plot No.126. He was asked by the said notice to submit documentary evidence to show as to when the said structure was raised. It was replied by the present appellant on 24.8.2007 and he produced ration card, identity card issued by the Election Commissioner, the receipt of hutment Survey 1990, the letter from the Municipal Corporation issued in 1992 about survey, electricity bill and the extract of voter's list. After that, on 6.11.2007, the notice was issued by the Corporation to the appellant contending that the hut of the plaintiff appears to have been constructed after 1.1.1995, the cut-off date and therefore, he should remove the structure within 7 days, otherwise it woule be demolished. A protection has been provided to the people who have raised huts even by making encroachments prior to 1.1.95. In view of this notice, the plaintiff

filed the suit for injunction and also took out Notice of Motion seeking temporary injunction restraining the Corporation from demolishing his structure unless he is given alternate accommodation for rehabilitation. The learned trial Court, after hearing the parties, dismissed the Notice of Motion observing that the documents produced by the plaintiff do not establish that his structure is of the period prior to 1.1.95 Therefore, he has preferred the present Appeal.

3. The learned Counsel for the appellant has taken me through the documents which were field by the plaintiff-appellant before the Municipal Authorities. First the ration card, issued on 14.8.89, which shows that he was residing near Sion-Bhandarwada near Sion Kamgar Co-operative Society, Sion. However, the identity card issued by the Election Commissioner on 20.11.94 reveals that the plaintiff was residing at 358, Shivaji Nagar Chawl, Sion Koliwada, Mumbai. Certainly the hut in dispute is not 358 Shivaji Nagar Chawl. The receipt about survey of huts undertaken in 1990 does not show anything as to which hut was accounted. The electoral roll of 1983 reveals that he was residing at Scheme No.6, Road 28A, Plot No.181. From this, it is clear that when the electoral roll was prepared in 1983, the plaintiff was residing on plot No.181. The hut in

dispute is at plot No.126. There is a copy of the order issued on 13.9.92 pertaining to the protection given against removal subject to depositing an amount of Rs.14,191/-. That document appears to be Government document. However, the name of the present applicant disappears. On that also it is shown as residing near Kamgar Co-operative Society Bhandarwada. If whole of the record is seen it appears that he had different addresses at different times. In 1983, he was residing at plot No.181. In November, 1994, when identity card was issued by the Election Commissioner, he was residing at 358 Shivaji Nagar Chawl. Taking into consideration this record, I am satisfied that the plaintiff failed to produce sufficient record to show that his hut on plot No.126 was standing since prior to 1.1.95. As such, prima facie, it appears that he is not entitled to protection and rehabilitation. I find no fault in the impugned order.

4. In the result, the Appeal stands dismissed.

5. As the Appeal itself is dismissed, Civil Application No. 1269 of 2007 does not survive and stands disposed of accordingly.

(J.H.BHATIA,J.)